



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** East West Research Inc.

**File:** B-237992

**Date:** February 26, 1990

Richard Snyder, for the protester  
Suzanne McKenna, Esq., Office of the General Counsel,  
Defense Logistics Agency.  
David Hasfurthur, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Protest that an approved source listed in the procurement documents is not a manufacturer is untimely since it was filed more than 10 working days after a contracting agency letter advised the protester that only manufacturers could be listed as approved sources.

### DECISION

East West Research Inc. protests the issuance of a purchase order to UPD, Inc., under request for quotations (RFQ) No. DLA400-89-T-F337, issued by the Defense General Supply Center (DGSC) for 5,000 ceramic welding torch cups. East West contends that the issuance of the purchase order was improper because UPD's offer was based on supplying a L-TEC Welding and Cutting Systems ceramic cup and L-TEC is not, as required, its manufacturer.

We dismiss the protest.

The RFQ, issued on April 18, 1989, required quotations to be returned by May 9. Ten firms including East West submitted quotations. The RFQ listed four manufacturers and their ceramic cup part numbers as acceptable items. One of these manufactures was L-TEC. By letter of June 7 to the protester concerning other procurements, DGSC's Chief of Technical Services advised East West that the agency would

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only list in its RFQ item description the item's manufacturer. According to the letter, a manufacturer was an entity which made a significant contribution to the fabrication of, or which controlled the design of, the item. East West indicates that it received this letter on or about June 10. On September 25, the agency issued a purchase order to UPD as the low quoter at a unit price of \$1.02. UPD based its quote on cups manufactured by L-TEC. East West's quote at a unit price of \$1.28 was based on a cup manufactured by Maryland Lava.

By letter of October 27, East West protested to DGSC that L-TEC and each of the other approved sources listed in the RFQ were not manufacturers and should not have been listed as approved sources. East West subsequently filed a protest on the same basis with our Office. The protester based its position that L-TEC and the other firms were not manufacturers on the information in the agency's June 7 letter.

East West's protest is untimely and will not be considered. Our Bid Protest Regulations provide that protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1989). The Regulations also provide that if the protest was initially filed with the contracting agency, the protest filed with our Office will be considered only if it was filed timely with the agency. 4 C.F.R. § 21.2(a)(3). The basis of the East West protest is the listing of L-TEC on the RFQ, which the protester had in April, along with the information contained in the agency's June 7 letter, which East West received on or about June 10. Since East West's initial protest to the agency was clearly filed more than 10 working days after the protester received this letter which along with the RFQ contained all the information needed to file the protest, the initial protest to the agency was untimely filed. Arrowpointe Corp.--Request for Reconsideration, B-237053.2, Oct. 30, 1989, 89-2 CPD ¶ 395. Accordingly, we will not consider the protest. Paragon Dynamics, Inc., B-235567, May 24, 1989, 89-1 CPD ¶ 504.

The protest is dismissed.

*Michael R. Golden*  
for

Ronald Berger  
Associate General Counsel